IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2116 OF 2000

1. Smt. Chaliamma R. Konar,)
2. Shri Satyavel Konar,)
Both residing at Malichawl,)
Unit No.31, Goregaon Aaray)
Colony, Goregaon (East),)
Mumbai.)
)
3. Shri Bhagwandas R. Morya)
Ganesh Nagar, Behind Modern)
Bakery, Aaray Colony, Mumbai)
)
4. Shri Prakash Shankar Gajmal)
Dange Nagar, J.V. Link Road,)
Kadam Chawl, Jogeshwari (E))
Mumbai.) ...Petitioners.

V/s

1. Union of India, through)
the Secretary, Ministry of)
Agriculture (Department of)
Animal Husbandry & Dairying))
Krishi Bhavan, New Delhi.)
)
2. The Director,)
Central Poultry Breeding)
Farm, Aaray Milk Colony,)
)
3. Dr. J.N. Bora, Nutitionist)
Regional Feed Analytical)
Laboratory, Aarey Colony,)
Mumbai 400 065.)
)
4. Member, Central)
Administrative Tribunal,Mumbai.) ...Respondents.

Mr. S.S. Pakale, advocate for the petitioner.

Mr. D.A. Dubey, advocate for the respondents - UOI

CORAM: V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATE: 8th July, 2004.

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Petitioners have filed this Petition under Article 226 of the Constitution of India and are challenging the order dated 10/03/1999, 18/03/1999, 06/12/1999, 10/02/2000 and termination order dated 01/05/1998. They are seeking an order of reinstatement with effect from 01/05/1998 with full back wages.

2. Petitioners are working in the establishment of respondent No.2 - Director, Central Poultry Breeding Farm, Aaray Milk Colony, Mumbai. Petitioners were working as labourers in or about 1977. Petitioners' case is that after working for about 10 years, they were given status of temporary workmen and, therefore, they acquired protection under Article 311 of the Constitution of India.

3. The case of the petitioners is that since their services were not regularized, they filed an application to the Central Administrative Tribunal (For short "CAT") being O.A. No.347 of 1995. Services of the petitioners were terminated without giving any notice and without holding any inquiry. Petitioners, therefore, filed O.A. No. 430 of 1998 challenging the order of termination. The CAT rejected the application of the petitioners for grant

of interim relief. Review Application was filed challenging the order dated 10/03/1999, refusing to grant interim relief. Since in the earlier application, interim order was passed on 12/06/1996, Review Application was disposed of with liberty to the petitioners to file an application in the earlier O.A. No. 347 of 1995. Petitioners also filed Contempt Petition. Both, the Contempt Petition and the Misc. Application were heard and disposed of. Petitioners have preferred this Writ Petition challenging refusal to grant interim relief by the CAT vide its order dated 10/3/1999 as also dismissal of the Misc. Application in the earlier O.A. No.347 of 1995 vide Order dated 10/02/2000 passed by the CAT as also dismissal of the Contempt Petition by CAT vide its Order dated 6/12/1999.

4. It is submitted by the learned Counsel appearing on behalf of the petitioners that the petitioners had acquired the status of temporary employees and, as such, even temporary employees could not be removed ignoring the mandate of Article 311 of the Constitution. It is further submitted that before terminating their services, no notices were given to them and no inquiry was held and, therefore, the said order of termination was patently illegal. It is

further submitted that their application for regularization of their services was already pending and, in the said application, respondents were restrained from terminating services of the petitioners.

5. The learned Counsel appearing on behalf of the respondents has submitted that the order of termination was perfectly legal as no stigma was attached to the said order of termination and in case of casual labourers an order of termination simpliciter could be passed. It is further submitted that since the petitioners - applicants were casual labourers, Central Civil Services (Temporary Service) Rules, 1965 could be made applicable to them.

6. It is an admitted position that the applicants were working as casual labourers in the Central Poultry Breeding Farm for many years. Respondents have not disputed that the petitioners are casual labourers. According to the petitioners, they have acquired the temporary status though this position is disputed by the respondents. The short question which falls for consideration is : whether services of casual labourers who have acquired status of temporary employees can be terminated without assigning any

reason and without holding any inquiry? The legal position is quite well settled and the Apex Court in catena of cases has held that the services of temporary employees can be terminated without holding any inquiry if the order of termination is a termination simpliciter and does not contain any stigma. The Tribunal by relying on Casual Labourers (Grant of Temporary Status and Rehabilitation) Scheme, has come to the conclusion that the persons who were casual labourers and who had acquired temporary status may be treated as temporary servants for certain purposes. However, since the services of the petitioners were terminated and the said termination was a termination simpliciter, no illegality was committed by the respondents by issuing the said order of termination. The CAT, after relying on various judgments of the Apex Court, came to the conclusion that the termination of the petitioners was perfectly valid as it was a termination simpliciter and, therefore, they could be terminated by giving a month's notice. The review application was also rejected. It is an admitted position that petitioners were not regularized. Their application for regularization was pending before the CAT. An interim order was passed in the said application. The Contempt Petition filed by the applicants was

dismissed by the CAT on the ground that though there was a breach of the order, because of the compelling circumstances the order of termination is issued which was held to be justified by the CAT by its order dated 10/3/1999 in O.A. No.430 of 1998 and, therefore, the Contempt Petition was dismissed.

7. From the record, it transpires that one day prior to the date of termination four applicants had criminally assaulted the head of the Office while he was performing his duties in his chair. The order of termination does not refer to the said criminal assault but it reads as under:-

> . In pursuance of the Proviso to sub rule (i) of rule 5, of the Central Civil Services (Temporary Service) Rules, 1965, I, Dr. J.N. Bora, DIRECTOR, Central Poultry Breeding Farm, Aarey Milk Colony, Mumbai - 400 065 hereby terminate forthwith the services of **Smt. Chellimma Konar, Casual Labour)** and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at

the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month."

Perusal of the said letter of termination clearly indicates that it is a letter of termination simpliciter and no stigma is attached to the said Order of termination. Respondents were empowered to issue such order of termination under Rule 5 of the Central Civil Services (Temporary Services) Rules 1965.

8. The submission of the learned Counsel appearing on behalf of the petitioners that even temporary casual labourers were entitled to protection under Article 311 of the Constitution of India and that the said mandate not being followed by the respondents, the order of termination was bad in law, cannot be accepted. The learned Counsel appearing on behalf of the petitioners placed reliance on the judgment of the Apex Court in the case of **NAR SINGH PAL Vs. UNION OF INDIA AND OTHERS** reported in **(2000) 3 SCC 588**. The ratio of the said judgment, however, would not

be applicable to the facts of the present case. In the said case, the appellant had acquired temporary status. His services were terminated on account of allegation of an assault made against the appellant. The Apex Court, in the facts of the said case, held that the order of termination in the said case could not be treated as a simple order of retrenchment but it was an order passed by way of punishment and, therefore, the order of dismissal on the basis of preliminary inquiry without holding a departmental inquiry would not be sustained. Under these circumstances, the Apex Court held that there was a violation of Article 311 of the Constitution of India. The facts of the present case, however, are entirely different. The order of termination is not punitive but is an order of termination simpliciter. The ratio of the said judgment, therefore, would not be applicable to the facts of the present case. The learned Counsel appearing on behalf of the petitioners also relied upon the number of other judgments of the Apex Court wherein a similar view is taken. However, the ratio laid down in those judgments would not be applicable to the facts of the present case as in all those cases the order was held to be punitive by the Apex Court. Thus,

in our view, there is no reason to interfere with the order passed by the CAT.

9. Writ Petition is accordingly dismissed.

V.G. PALSHIKAR, J.‘

V.M. KANADE, J.